

BEFORE THE DEPARTMENT  
OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT
of ARM 38.5.3301, 38.5.3302,	)	AND REPEAL
38.5.3320, 38.5.3330, 38.5.3331	)	
38.5.3332, 38.5.3334, 38.5.3335	)	
38.5.3336, 38.5.3339, 38.5.3350	)	
38.5.3353, 38.5.3360, 38.5.3361	)	
38.5.3362, 38.5.3371, and the	)	
repeal of ARM 38.5.3333, 38.5.3337	)	
38.5.3338, 38.5.3341, 38.5.3343	)	
38.5.3352, and 38.5.3370, all	)	
pertaining to Telecommunications	)	
Service Standards	)	

TO: All Concerned Persons

1. On July 27, 2006, the Department of Public Service Regulation, Public Service Commission (PSC or Commission), published MAR notice number 38-2-194, regarding a public hearing on the proposed amendment of rules and repeal of rules concerning Telecommunication Service Standards, at page 1844 of the 2006 Montana Administrative Register, issue number 14.

2. The PSC has amended the following rules as proposed: ARM 38.5.3301, 38.5.3320, 38.5.3331, 38.5.3334, 38.5.3335, 38.5.3339, 38.5.3350, 38.5.3360 and 38.5.3361

3. The PSC has amended the following rules as proposed, but with the following changes, stricken matter interlined, new matter underlined:

38.5.3302 DEFINITIONS In the interpretation of these rules, the following definitions shall be used:

(1) through (9) remain as proposed.

(10) "Facilities-based carrier" for purposes of these rules means a carrier that owns a majority of the facilities by which the carrier provides telecommunications service in Montana.

(10) through (14) remain as proposed, but are renumbered (11) through (15).

(16) "Local exchange carrier" means a carrier that provides local exchange service.

(15) through (19) remain as proposed, but are renumbered (17) through (21).

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

Montana Administrative Register 38-2-194

38.5.3330 RATE AND SPECIAL CHARGES INFORMATION (1) ~~Each carrier whose tariff or price list is filed with the commission must have its tariff or price list available for viewing at each business office. If the carrier has no local business office in Montana, the Montana tariff or price list must be posted on its website. A carrier must provide all information and assistance needed by applicants, customers, or others to determine the lowest cost telecommunications service available from the carrier that meets their stated needs. The carrier must provide written rate information at the request of customers and as otherwise required by the commission.~~

~~(2) A carrier must provide all information and assistance needed by applicants, customers, or others to determine the lowest cost telecommunications service available from the carrier that meets their stated needs. The carrier must provide written rate information at the request of customers and as otherwise required by the commission. Each carrier whose tariff or price list is filed with the commission must have its tariff or price list available for viewing at each business office. If the carrier has no local business office in Montana, the Montana tariff or price list must be posted on its website.~~

(3) Prior to taking any action or offering any service, the local exchange carrier must notify customers of any connection charge or other charge and must provide an estimate of the initial bill for flat monthly services and other applicable charges. The local exchange carrier shall inform the customer whether or not taxes and other fees are included in the estimate.

(4) The local exchange carrier must offer to give an applicant a written estimate of special charges for services not established by tariff, such as construction charges, which are levied on an actual cost basis.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

38.5.3332 CUSTOMER BILLING (1) through (4) remain as proposed.

(5) Local exchange service cannot be denied or terminated because of nonpayment of unregulated services, toll services, or services provided by other carriers, except when a local exchange carrier's local, toll, or unregulated services are combined into one service package at a single rate. A carrier's bill to its customer shall clearly distinguish between regulated and unregulated service.

(a) ~~(6)~~ Undesignated partial payments of a bill shall be applied first to local exchange carrier regulated local exchange services and then to service other than local exchange carrier regulated local exchange services in such percentage as each other service provider's charges represent of the total charges. When a local exchange carrier's local, toll, or unregulated services are combined into one service package at a single rate, undesignated partial payments shall be applied first to the service package, then to other services as described above.

(6) remains as proposed, but is renumbered (7).

~~(7) (8)~~ All carriers are prohibited from charging any amount for incomplete or unanswered calls.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, 69-3-221, MCA

38.5.3336 DIRECTORIES (1) through (3) remain as proposed.

(4) Information pertaining to emergency calls, such as for the police and fire departments, must be conspicuously printed on the inside front cover of the directory.

(4) through (6) remain as proposed, but are renumbered (5) through (7).

~~(7) (8) #~~ Except when the number listed in error is in use by another customer or is assigned to a different carrier, if there is an error in the directory listing for a customer, the local exchange carrier must intercept all calls to the listed number at no charge, for six months or until a new directory is published, whichever occurs first. Alternatively, the local exchange carrier may forward all calls to the listed number to the correct number. If there is an error or omission in the name listing of a customer, the correct name and telephone number must be placed in the files of the directory assistance and/or intercept operators and the correct number furnished the calling party upon request or interception. Competitive local exchange carriers are exempt from this requirement if technically unable to comply with it.

(8) remains as proposed, but is renumbered (9).

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

38.5.3353 NETWORK INTERFACE (1) ~~Each facilities-based local exchange carrier providing service by means of its own facilities to the customer's location shall establish a point of demarcation between the utility carrier facilities and a customer's premises wiring and equipment. It shall be the responsibility of the utility to install and maintain a network interface device (NID) in accordance with commission guidelines, the local exchange carrier's tariff, and with rules established by the Federal Communications Commission.~~

(2) and (3) remain as proposed.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

38.5.3362 SERVICE INTERRUPTIONS (1) In the event that a facilities-based local exchange service must be interrupted for over four hours for planned work on the facilities or equipment, the work shall be done at a time which will cause minimal inconvenience to customers. In the event that local exchange service must be so interrupted, the facilities-based local exchange carrier shall attempt to notify each affected customer at least 24 hours in advance of the interruption.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

38.5.3371 SERVICE REQUIREMENTS (1) These rules establish service quality requirements for ~~facilities-based~~ local exchange carriers ~~providing service by means of their own facilities~~. The carrier shall be expected to meet generally accepted industry standards for quality on any service provided by the carrier that is not covered by these rules.

(2) Based on commission receipt of increasing consumer complaints or other relevant information about the level of service being provided by a carrier to which these service quality requirements apply, the commission may require the carrier to begin documenting its compliance with any or all of these service requirements and providing periodic service quality reports containing such documentation to the commission. If a carrier is required by the commission to provide records or documentation regarding its compliance, the records or documentation must be reported on individual exchange and statewide aggregate bases.

(3) through (3)(a) remain as proposed.

(b) Each ~~exchange~~ carrier shall make commitments to customers as to the date of installation of all service orders.

(c) remains as proposed.

(d) A carrier shall not cancel customer installation orders at its own discretion. An installation order received by a carrier shall remain a pending order until the installation is completed or the customer requests cancellation at his or her own initiative or in response to the carrier's inquiry. An installation order may be cancelled if the carrier has made a good faith effort to contact the customer and the customer has not responded to the carrier's inquiries.

(4) through (7) remain as proposed.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-201, MCA

4. The PSC has repealed ARM 38.5.3333, 38.5.3337, 38.5.3338, 38.5.3341, 38.5.3343, 38.5.3352 and 38.5.3370 as proposed.

5. The following comments were received and appear with the PSC's responses:

COMMENT (general): Qwest Corporation (Qwest) commented it supports the rulemaking and generally agrees with the amendments, with qualifications. The Montana Telecommunications Association (MTA), the Montana Independent Telecommunications Systems (MITS), Blackfoot Telephone Cooperative, Inc., and Blackfoot Communications, Inc. (Blackfoot), Verizon (on behalf of affiliates), and the Montana Consumer Counsel (MCC) appeared as opponents or to provide information. In its written comments, MTA questioned whether service quality standards have a role to play in the increasingly competitive telecommunications environment. MTA commented that service quality rules should apply only to

eligible telecommunications carriers and only to a minimum extent. MTA and Blackfoot recommended that the rules should not apply to any carrier unless a carrier's service quality has been determined in a formal proceeding to be measurably inferior. Blackfoot suggested that if the PSC preferred a firmer test for applying the rules to a carrier, the appropriate threshold would be if the PSC had received consumer complaints on more than one-half of 1% of the carrier's total access lines in a year. MTA and Blackfoot commented generally that the proposed rules are often unclear as to applicability to all carriers or to a subset of them and recommended revising rules where necessary to clarify their applicability and to maintain the consistent use of terms throughout. MCC commented that, because there is no evidence that competitive alternatives exist for all Montana customers, there is no justification for across-the-board reduction in service quality standards statewide. MCC also expressed concern that the quality of basic phone service should be prioritized in an environment where providers are investing in advanced services and products. Verizon and AT&T Communications of the Mountain States, Inc., and SBC Long Distance, LLC, dba AT&T Long Distance (AT&T) recommended the PSC limit the rules' application to residential service only because business customers are sophisticated, there is competition for business customers, and many business customers' telecommunications service is provided under contract. Citing ambiguity about the applicability of the rules to rural cooperatives, Blackfoot recommended amending the rules to simply state that they do not apply to cooperatives. Blackfoot also commented that competitive local exchange carriers should be exempt from the rules because it could place them at a competitive disadvantage. If the PSC does not exempt competitive local exchange carriers from the rules, Blackfoot suggested that the rules be modified to ensure all carriers in this group, such as carriers using packet-switching technology, are subject to them.

RESPONSE: Under Montana law, the PSC is responsible for ensuring that regulated telecommunications carriers provide adequate service. These rules' consumer protections and service standards establish for the PSC and for regulated carriers the minimum expectations for the provision of adequate service. In this rulemaking the PSC recognizes the need for updating and eliminating rules in light of the changes in the telecommunications marketplace that were noted by many commenters. The PSC agrees with MCC regarding the importance of ensuring the service quality of plain old telephone service. The rules have been amended in several places to clarify their applicability. The rules that provide consumer protections, such as the billing, deposits, and termination requirements, are reasonably applied to all carriers, including competitive local exchange carriers. It is equally reasonable that other rules do not apply to all carriers. No argument has been presented by AT&T or Verizon that persuades the PSC to apply the rules to provision of residential service only. The PSC reiterates yet again that these rules do not apply to rural telephone cooperatives or wireless carriers, both of which are exempt from PSC jurisdiction by law.

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COMMENT (ARM 38.5.3301): AT&T proposed revising subpart (2) to state the rules apply only to residential retail local exchange service.

RESPONSE: The PSC declines to revise the rule as suggested by AT&T. The significant narrowing of the applicability of the rules proposed by AT&T is beyond the scope of the rules as noticed and would require a new rulemaking proceeding to provide interested persons with an opportunity to comment on the proposal.

COMMENT (38.5.3302): Qwest recommended adding its suggested definitions of the terms "facilities-based carrier" and "unavoidable causalities and acts of God," and revising the definition of "installation order" to include, rather than exclude, change orders and requests for feature additions. MCC also recommended a definition of the term "facilities-based carrier." MTA commented confusion results because the term "local exchange carrier" is not defined and the definition of "incumbent local exchange carrier" does not include an exemption for rural cooperative or wireless carriers. MTA recommended the use of a single term for "carrier" throughout the rules. AT&T recommended elimination of the language "through any means" from the definition of "competitive local exchange carrier" to make clear that unregulated services are not included inappropriately.

RESPONSE: The PSC agrees "facilities-based carrier" and "local exchange carrier" should be defined and has amended the rule accordingly. The PSC overrules the remaining comments. Qwest's proposed definition of "unavoidable causalities and acts of God" is overly long and unnecessarily detailed. The term "installation order" is purposely limited to orders regarding installation of access lines because the PSC's concern is that carriers provide working telephone service to customers within a reasonable time. The PSC declines to revise the "incumbent local exchange carrier" definition to clarify that it does not include unregulated entities because the definition of "carrier" already expressly states that these rules do not apply to rural cooperatives or wireless carriers. Because one purpose of this rulemaking is to revise the existing rules to clarify which rules apply to which categories of carriers, it is not possible to use just the term "carrier" throughout the rules. The definition of "competitive local exchange carrier" is clearly limited to regulated local exchange service.

COMMENT (ARM 33.5.3320): MTA commented that incumbent local exchange carriers would be subject to subpart (1), while a separate class of carriers would be subject to subparts (2) and (3). AT&T commented that subpart (3) needs clarification as to the definition of "facilities-based carrier" and recommended a definition.

RESPONSE: MTA is correct that only regulated incumbent local exchange carriers are required to file exchange maps and tariffs, only facilities-based carriers must report service outages, and all carriers must provide commission-requested information. The PSC has added a definition of "facilities-based carrier" in the definitions section.

COMMENT (ARM 38.5.3330): MTA requested clarification of the applicability of each subpart.

RESPONSE: Subparts (1) and (2) are clear in this regard, but the order in which they appear in the rule is rearranged to effect a more logical progression from general application to all carriers through the narrowing applicability of the remaining subparts. The words “local exchange” have been inserted before the word “carrier” in subparts (3) and (4) to clarify the requirements regarding cost estimates apply to local exchange carriers.

COMMENT (ARM 38.5.3331): MTA requested clarification as to whether its assumption that this rule applies to all carriers is correct.

RESPONSE: The rule requires all carriers to have a business office to respond to customers’ inquiries and further ensures that customers are provided with the toll-free numbers of carriers or other entities whose charges appear on their local phone bills.

COMMENT (ARM 38.5.3332): AT&T commented that subpart (1)(a) should allow carriers and customers to agree on alternative billing schedules. AT&T commented it assumes that the “new provider” referred to in subpart (1)(e) is a provider with whom the customer does not have a continuing relationship. MTA recommended amending subparts (5) and (5)(a) to create exceptions for service packages in the rules related to separating regulated from unregulated services on a bill and allocation of undesignated partial payments. Verizon agreed with MTA that service packages should be exempted from the allocation of partial payment rule and commented that subpart (5)(a) regarding the allocation of partial payments among several providers may be problematic, impractical, and possibly costly for carriers to implement. Verizon agreed with the concept that no carrier is favored over another when partial payments are allocated, but commented the rule’s language needs clarification. Regarding the prohibition at subpart (7) against billing for incomplete calls, Verizon recommended the term “incomplete calls” be defined.

RESPONSE: Regarding AT&T’s comment that carriers and customers should be allowed to agree on alternative billing schedules, that is exactly what subpart (1)(a) provides. AT&T is incorrect in its limited interpretation of what a “new provider” is in subpart (1)(e) because the rule requires clear and conspicuous identification on the bill of any provider that did not have any charges billed to the customer in the previous month. The PSC agrees with MTA that consistency requires the service-package exception to be included in subparts (5) and (5)(a). Those subparts have been revised accordingly. Subpart (5)(a) has been renumbered (6) to meet standard rule-numbering conventions. The PSC does not agree with Verizon that the allocation of partial payments rule needs clarification because, except for the change that partial payments must be applied first to regulated local exchange service, the allocation method is unchanged from the

existing rule that has been in place for many years. The PSC agrees with the point made by Verizon regarding subpart (7) and has deleted the reference to “incomplete” calls.

COMMENT (ARM 38.5.3336): MTA requested clarification of applicability of subpart (2) and questioned whether the rule is consistent with federal and state ETC designations. MCC commented that subpart (4), which requires emergency call information be included in directories, should not be deleted because the PSC should not assume every person knows how to contact emergency services. Regarding subpart (5), MTA commented the rule imposes a new discriminatory requirement that incumbent local exchange carriers set aside limited and valuable space in their directories for other carriers’ information. MITS objected to subpart (7), which requires that when a directory listing is mistaken, the local exchange carrier must intercept calls to listed number. MITS and AT&T commented this rule fails to take into account the situation where the number listed in error is being used by another customer or has been assigned to another carrier. MTA commented that subpart (7) exempts competitive local exchange carriers from addressing directory listing errors. MCC objected to deletion of subpart (9), which requires the carrier, in cases where the customer’s number has changed after directory publication, to offer to intercept calls to the published number. MCC recommended keeping that requirement, at least where the carrier has changed the customer’s number or there has been a publishing error.

RESPONSE: Because a definition of the term “local exchange carrier” has been added, MTA’s confusion over applicability of subpart (2) should be resolved. There is no conflict between this subpart and federal and state ETC requirements. The PSC agrees with MCC’s suggestion to keep, rather than delete, the requirement that emergency call information be included in directories and that sentence of the subpart is retained in the rule. The existing requirement in subpart (5) that incumbent local exchange carriers make space available in their directories at a reasonable charge for interexchange carriers’ information is expanded to making space available to all carriers because the types of competing carriers today include more than just long-distance carriers. The PSC agrees with MITS and AT&T that an exception needs to be inserted in subpart (7) for circumstances in which the number listed in error is in use by another customer or assigned to a different carrier. The PSC declines MCC’s suggestion to keep subpart (9) because a customer interested in purchasing call intercept service from a carrier will likely inquire about it when he or she changes phone numbers.

COMMENT (ARM 38.5.3339): Verizon objected to the requirement in subpart (6) that a carrier must provide seven days’ notice before terminating service unless there is both excessive toll usage and an identifiable risk of nonpayment because, according to Verizon, it undermines carriers’ efforts to prevent fraud. Verizon recommended that the rule be amended to allow termination with reduced notice requirements if either there is excessive toll usage or identifiable risk of



nonpayment, but not necessarily both. AT&T commented that both interstate and intrastate toll usage be included in this rule's calculation and also recommended that the toll usage threshold of \$100 be reduced to \$50.

RESPONSE: The amendments to subpart (6) were made to remove the internal catchphrases that are not allowed in administrative rulemaking format. The PSC declines at this time to revise the substantive requirements of the subpart, which have been in effect for many years, and would be beyond the scope of this rulemaking.

COMMENT (ARM 38.5.3352): Qwest recommended deletion of the term "exchange" preceding "carrier" in the title in order to maintain consistency.

RESPONSE: This rule is being repealed and is not subject to revision.

COMMENT (ARM 38.5.3353): MTA objected to the use of the term "utility" in this rule. MCC objected to deletion of subpart (4) because the rule ensures the NID is not placed away from the customer's inside wiring which would cause the customer to pay more to connect the NID. MCC also objected to the deletions of subparts (5) and (6) unless the PSC is certain that all customers' premises have NIDs.

RESPONSE: The PSC inserts "facilities-based" in subpart (1) for clarification. The PSC agrees with MTA and has revised the rule to replace "utility" with "carrier." It is not necessary to keep subparts (4) through (6) because they are restatements of the requirement in subpart (1) that a facilities-based local exchange carrier must install and maintain a NID as the point of demarcation between its facilities and a customer's premise and wiring.

COMMENT (ARM 38.5.3362): MTA requested clarification of applicability of this rule. MCC recommends keeping subpart (1) and suggests providers should provide emergency service by means of a temporary pay telephone. AT&T commented that subpart (1) should be amended to apply to facilities-based local exchange carriers and recommended the rule be amended to allow non-facilities-based carriers' interconnection agreements with facilities-based carriers address customer notification issues or, alternatively, direct incumbent carriers in this rule to timely inform competitors in order to allow them to meet the 24-hour notice timeframe.

RESPONSE: The rule has been revised to clarify it applies only to facilities-based local exchange carriers. The PSC does not agree with MCC's suggestion that a temporary pay telephone be installed when a carrier is working on its facilities because there is no information in this proceeding as to the suggestion's technical and legal feasibility or cost.

COMMENT (ARM 38.5.3371): MITS commented generally that applying

service quality standards based on a percentage of a carrier's orders, installations, and so forth, means that small carriers are held to higher standards than large carriers because one or two violations by a small carrier could result in noncompliance. MITS also recommended amending this rule to exempt small telecommunications carriers as defined in 69-3-901, MCA, from the record maintenance, documentation, and reporting requirements unless, following a formal complaint proceeding, the PSC determines a service quality problem exists. Qwest recommended revising the first sentence of subpart (1) to state that the rule's requirements apply to local exchange carriers providing service "primarily through" their own facilities, rather than "by means of" their own facilities. MTA requested clarification of applicability of subpart (1). Blackfoot and AT&T commented that competitive local exchange carriers who purchase facilities from another carrier often have no control over when service will be installed and recommended that competitive local exchange carriers be exempt from installation standards. AT&T also recommended defining "facilities-based carrier" and commented the service quality standards should not apply to local service resellers or those who provision service via unbundled network element platform type arrangements. Qwest commented that the language in subpart (2) that relates to the trigger for requiring service quality compliance reporting is vague and should be clarified to specify that the PSC could require documentation and reporting if the number of consumer complaints to the PSC indicated a carrier exhibited a pattern of service quality violations. MTA recommended new language at subpart (2) to require service quality reporting if the PSC receives a "sufficient number" of consumer complaints and proves in a formal proceeding that the carrier's service quality warrants application of documentation and reporting requirements. AT&T recommended amending the rule to allow competitive local exchange carriers to collect and report data on a statewide basis to reflect their network architecture. MCC recommended that no changes be made to the existing service quality documentation and reporting requirements because: they provide carriers an incentive to comply; without the reporting requirements the PSC will not know when service quality deteriorates or have the data necessary for comparisons and corrections; and the PSC should monitor and regulate service quality until local exchange markets are workably competitive as determined by the PSC. Regarding subpart (3), Qwest and MTA proposed inserting force majeure language and recommended the 95% installation standard should apply only to orders that do not require construction. MTA additionally recommended excluding orders where fees have not been paid, and noted carriers may not have systems in place to track customer-requested due dates. Qwest recommended the 100% installation standard within 180 days in subpart (3)(a) be revised to 99% and that it apply to service orders requiring facilities. MITS objected to the 100% standard as well because it would be nearly impossible for small carriers to meet. MTA recommended that subpart (3)(a) and (3)(c) include exceptions to take into account extenuating circumstances. MTA requested that deleted language in the former subpart (3)(b) be retained. Qwest recommended deletion of (3)(c), which specifies the circumstances under which certain installation orders not completed on time may not be counted as rule

violations. Citing system modification costs, Qwest recommended deletion of the prohibition against a carrier excluding orders from this measurement due to no access to the customer's location when the carrier fails to show up at the location during the four-hour appointment window. Qwest commented that the prohibition in subpart (3)(d) against a carrier cancelling a customer's installation order at its own discretion is not reasonable and suggested adding language to allow a carrier to cancel an order if the carrier attempts to contact the customer and receives no response. AT&T commented it cancels a residential customer's order if it will be held more than 14 days and recommended deletion of this rule. Qwest suggested deletion of the term "exchange" preceding "carrier" at subpart (3)(b) in order to maintain consistency and MTA submitted the same comment about (3)(c). AT&T recommended deletion of the answering time metrics in subpart (4) because they are relics of the past. Qwest commented that the exceptions in subpart (7)(b) should be deleted and that a reference to Qwest's proposed force majeure section be inserted instead. AT&T commented that non-facilities-based carriers may not be able to meet the 24-hour standard in subpart (7)(b) because they have to coordinate with another carrier and recommended revised language and a lower standard in cases where more than one carrier is involved. MTA recommended that (7)(d)(iv) be revised to allow carriers to charge for investigating trouble reports on the carrier's side of the service if the customer caused the trouble.

RESPONSE: MITS concerns about the installation standards' effect on small carriers are unfounded for two reasons: compliance documentation and reporting is not triggered under the rule unless the PSC has good reason to suspect a service quality problem exists based on complaints received, which should alleviate small carriers' concerns because the PSC typically receives few service-related complaints from their customers; and the rule recognizes that sometimes installation orders are not completed for reasons that are not within the carrier's control and provides violation exceptions in those circumstances. Subpart (1) has been revised as suggested by several commenters to make clear that the rule applies to "facilities-based local exchange carriers." The PSC has revised the trigger provision at subpart (2) to insert the modifier "increasing" preceding "consumer complaints" in response to Qwest's and MTA's concerns. However, the PSC must retain some flexibility within reason when applying the documentation and reporting trigger. Regarding AT&T's suggestion to allow collection and reporting of data on a statewide basis to reflect a carrier's network architecture, the PSC declines to revise the subpart because a carrier that is required to document and report compliance can make its case at that time about any reporting limitations. Regarding MCC's concerns, the PSC continues to monitor and regulate service quality under this rule; however, carriers have argued persuasively that the requirements for service quality compliance documentation and reporting should be not be applied unless the PSC has reason to suspect a carrier is not meeting the standards. The revised standard of subpart (3), requiring completion of 95% of all installation orders within 5 business days is reasonable because by far the majority of a carrier's installation orders do not require construction. The revised rule's time frame of 5 business days is more lenient than the former rule's requirement that 95% of installation

orders not requiring construction be completed within 3 business days. The rule at subpart (3)(a) then allows 180 days for completion of 100% of installation orders, which is a reasonable time frame and standard for the small percentage of a carrier's orders that require more time to complete, usually because construction is required, especially when a carrier is allowed by rule to exclude orders if the carrier is unable to comply due to customer reasons, work stoppages, or other circumstances outside the carrier's control. There is no need, given the scope of the provided exclusions, to insert additional exclusions or force majeure language as suggested by several commenters. The PSC does not adopt Qwest's recommendation that the prohibition be deleted in subpart (3)(c) against a carrier excluding orders due to no access to the customer's location when the carrier fails to show up at the appointed time. These circumstances do not constitute a true "no access" exclusion. The PSC agrees with Qwest's comment that subpart (3)(d) should allow a carrier to cancel an order if the carrier can document attempts to contact the customer and the customer did not respond. The subpart has been revised accordingly. AT&T's practice of cancelling a customer's order if AT&T cannot complete it in 14 days is not reasonable from a customer perspective. As suggested by Qwest and MTA, the word "exchange" preceding "carrier" has been deleted in subpart (3)(b). The PSC declines to accept AT&T's suggestion that answering time metrics in subpart (4) be deleted because deletion of these metrics was not proposed in this rulemaking and other parties have therefore not had the opportunity to comment on it. The PSC declines to accept Qwest's suggestion that the exclusions in subpart (7)(b) be deleted because deletion of these exclusions was not proposed in this rulemaking and other parties have therefore not had the opportunity to comment on it. Regarding MTA's suggestion that subpart (7)(d)(iv) be revised to allow carriers to charge for trouble report investigation when the customer caused the trouble, the PSC disagrees. The carrier may certainly charge a customer for repair of the carrier's facilities when the customer caused the damage that must be repaired, but if a carrier charges customers to investigate trouble reports, it may not charge for investigating a trouble report on its own facilities.

/s/ Greg Jergeson

Greg Jergeson, Chairman  
Public Service Commission

/s/ Robin A. McHugh

Reviewed by Robin A. McHugh

Certified to the Secretary of State November 27, 2006.

Montana Administrative Register 38-2-194